

**From:** Perkins, Cindy (Personnel Board)  
**Sent:** Friday, February 09, 2007 3:02 PM  
**To:** Hagy, Donald C (Personnel Board)  
**Subject:** January 2007 Minutes for the web

**KENTUCKY PERSONNEL BOARD**

**MINUTES OF JANUARY 12, 2007**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Greg Higgins, on January 15, 2007, at approximately 9:30 a.m., 5 Fountain Place, Frankfort, Kentucky. The first order of business was to swear in the newest Board members appointed by the Governor, Jackson M. Andrews and Robert B. Frazer. They were sworn in by General Counsel Boyce "Andy" Crocker and welcomed by Chairman Higgins.

Board personnel present:

Greg Higgins, Chairman  
Tina Goodmann, Vice-Chairman  
Betty Gibson, Member  
Lisa Hendricks, Member  
Rosemary Center, Member  
Jackson M. Andrews, Member  
Robert B. Frazer, Member  
Mark A. Sipek, Executive Director and Secretary  
Boyce A. Crocker, General Counsel  
Linda R. Morris, Administrative Section Supervisor  
Cynthia Perkins, Administrative Specialist

**2. READING OF THE MINUTES OF REGULAR MEETING HELD DEC. 15, 2006**

The minutes of the last Board meeting had been circulated among the members previously. Chairman Higgins asked for additions or corrections. Ms. Goodmann moved to approve the minutes as submitted, Ms. Gibson seconded, and the motion carried 6-0. The Board members signed the minutes. (Chairman Higgins does not vote unless noted.)

**3. EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek welcomed the new members, Jackson Andrews and Robert Frazer, to the Board. He stated that two items were added to the agenda: a report from the Personnel Cabinet

concerning the 2007 Health Insurance Regulation and a petitioned position for a Medical Director from the Kentucky Horse Racing Authority. Mr. Sipek further stated that the Board has leased 38 Fountain Place as a third hearing room. This is to primarily help with scheduling pre-hearing conferences, getting them scheduled as soon as possible and keeping the cases moving. The staff will assess in the upcoming months how useful having this space will be.

#### 4. **PERSONNEL CABINET'S REPORT**

##### 2007 Health Insurance Regulation

Secretary Brian Crall provided a PowerPoint presentation. Also attending were Commissioner Christine Wilcoxson and Deputy Commissioner Eric Poston. Secretary Crall reported that pursuant to HB380 (FY 2006-2008) the legislators have mandated that the Personnel Cabinet incorporate by reference the state employee health plan. Secretary Crall stated that the 2007 health insurance plan is fully self-insured. The Commonwealth bears all the risk for losses; there are no carrier premiums and no claims which means no profits made by the insurance company. This has served effectively in reduction of premiums. One risk of being self-insured is if claims get more aggressive than are anticipated, the state might have to make that up. However, an advantage to the plan is the state can control more of the variables, i.e. benefit construction and premiums. Early reports of this plan have been very favorable to the Commonwealth. He reported that there are no benefit changes from the previous plans, although there is a slight premium increase. He further reported that with the addition of the fourth option plan, they went from an FSA (Flexible Spending Account) to an HRA (Health Reimbursement Account). The benefit of the HRA is that whatever is not used by the individual at the end of the year rolls over to the next year and is not swept back into the General Fund as was done with the FSA plan. One goal is to get individuals more involved in their own health care and health insurance.

In addition, Secretary Crall informed the Board as to their request for the monetary difference between the increment for 2007 versus the 5% increment (for the fiscal year), that the Budget Office is working on getting these figures and hopes to have them soon.

Chairman Higgins announced that a short break would be taken while the PowerPoint equipment was taken down. The meeting was resumed at 10:10 a.m.

#### 5. **PETITIONED POSITIONS:**

##### Medical Director, Kentucky Horse Racing Authority

On behalf of the Kentucky Horse Racing Authority, Leesa Moorman, EPPC, and Patricia Cooksey, Deputy Executive Director, were in attendance to present their case for a Medical Director (Policy Advisor) and to answer questions from the Board. Ms. Moorman informed the Board that this position would help develop a model equine drug testing program to ensure the integrity of the Kentucky horse racing industry. This position will be funded entirely by the Kentucky Equine Drug Research Council. No General Funds will be used for this position. Further, there is no merit position that currently has these job duties associated with it. Chairman Higgins questioned Ms. Moorman about what is currently being done. She responded that currently there is a new Equine Drug Regulation package and they are currently using existing staff to try to administer the program. They also want to establish a "Testing Barn." There is no staff person specifically assigned with developing this policy. Chairman Higgins asked if someone was needed to assume these duties to fill a mandate, to which Ms. Moorman agreed. Chairman Higgins asked if there were any more questions. Mr. Andrews wanted to know what the qualifications were. Ms. Moorman stated that they were looking for someone with a degree in Veterinary Medicine, as well as five years of research experience or equine health and welfare experience. Primarily they needed someone who was knowledgeable about drug testing issues. Chairman Higgins asked if there was a pool of qualified personnel. Ms. Moorman stated there were veterinarians in the community whom she was hoping would apply.

Mr. Sipek explained to the new Board members that under KRS 18A.115, there were a set number of non-merit positions. An agency can add one position by making a request; the second must be approved by the Personnel Cabinet, and if a third is requested, it must be approved by the Board.

Ms. Moorman explained that time is of the essence. The agency believes this position is essential and asked the Board for approval as soon as possible. Chairman Higgins said if the Board was comfortable, they would make a decision today.

## **6. ORAL ARGUMENTS**

### **A. Douglas Gregory v. Finance and Administration Cabinet**

Present were Hon. Paul Fauri, counsel for the Appellant, who had requested oral arguments; and Hon. Dan Egbers for the Hon. Celia Dunlap, Counsel for the Appellee. The parties answered questions from the Board.

### **B. Ronnie Price v. Department of Corrections**

Present were Hon. Paul Fauri, counsel for the Appellant, who had requested oral arguments; and

the Hon. Holly Harris, counsel for the Appellee. The parties answered questions from the Board.

C. Amanda Seigle, Marjorie Shular, and Gretchen Marshall v. Personnel Cabinet

Present were Appellant Amanda Seigle and her attorney the Hon. Myrle Davis, and Gretchen Marshall (Appellants Marshall and Seigle requested oral arguments); and Hon. Anne Burnham, counsel for the Appellee. The parties answered questions from the Board. Further, the Appellee presented a Motion for Consideration of the Opinion/Position of the Cabinet for Health and Family Services at the January 12, 2007 Board Meeting. The Board asked questions regarding the motion, which will be ruled on in closed session.

7. **MOTIONS – None**

(The only motion filed was in conjunction with the Seigle, et al. oral argument.)

8. **CLOSED SESSION**

Ms. Goodmann moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudication; Mr. Andrews seconded. Chairman Higgins stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), (j) and (k), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 6-0. (11:38 a.m.)

Ms. Gibson moved to return to open session, Ms. Goodmann seconded, and the motion carried 6-0. (1:40 p.m.)

9. **CASES TO BE DECIDED**

The Board reviewed the following cases. At that time, the Board considered the hearing officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. Rebecca Smith v. Department of Veteran's Affairs (Deferred from August)

Ms. Gibson moved to note Appellant's Exceptions and oral arguments, and to revise the recommended order in accordance with the Final Order attached to these minutes, thereby sustaining the appeal to the extent that the dismissal was changed to a 30-day suspension. Mr. Andrews seconded and the motion carried 6-0.

B. Douglas Gregory v. Finance and Administration Cabinet

Ms. Hendricks moved to note Appellant's exceptions, Appellee's response and oral arguments, and to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 6-0.

C. Ronnie Price v. Department of Corrections

Mr. Frazer moved to note Appellant's exceptions, Appellee's response and oral arguments, and to accept the recommended order dismissing the appeal. Ms. Center seconded and the motion carried 6-0.

D. Amanda Seigle, Marjorie Shular, and Gretchen Marshall v. Personnel Cabinet

The Board first considered the Appellee's Motion for Consideration of the Opinion/Position of the Cabinet for Health and Family Services at the January 12, 2007 Board Meeting. Mr. Frazer moved that that Appellee's Motion be overruled, Mr. Andrews seconded and the motion carried 6-0.

Mr. Andrews moved to defer this matter to the next meeting of the Board, Ms. Gibson seconded and the motion carried 6-0.

E. David Alexander v. Department of Corrections

Ms. Goodmann moved to accept the recommended order (with clerical corrections) dismissing the appeal. Ms. Center seconded and the motion carried 6-0.

F. Rachel Coffey v. Cabinet for Health and Family Services

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 6-0.

G. John Kyle Cooper v. Transportation Cabinet

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Ms. Center seconded and the motion carried 6-0.

H. Pamela David v. Department of Juvenile Justice

Ms. Center moved to accept the recommended order sustaining the appeal to the extent that the suspension was changed to a written reprimand. Ms. Goodman seconded and the motion carried 6-0.

I. Vicky Franks v. Cabinet for Health and Family Services

Ms. Goodman moved to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 6-0.

J. Michael Fry v. Education Cabinet

Ms. Gibson moved to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 6-0.

K. Sheila Geiman v. Cabinet for Health and Family Services

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 6-0.

L. Vladimir Gomelsky v. Personnel Cabinet

Ms. Center moved to accept the recommended order dismissing the appeal. Ms. Goodman seconded and the motion carried 6-0.

M. Leora Gunn v. Cabinet for Health and Family Services

Ms. Goodman moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 6-0.

N. Dwight Payton v. Department of Juvenile Justice

Mr. Frazer moved to accept the recommended order dismissing the appeal. Ms. Center seconded

and the motion carried 6-0.

O. Peter Scott v. Cabinet for Health and Family Services

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 6-0.

P. Charles Woolum, Wanda Woolum and Jackie Asbell v. Finance and Administration Cabinet (3 appeals)

Ms. Center moved to accept the recommended order dismissing the appeal. Ms. Goodmann seconded and the motion carried 6-0.

**Show Cause Orders – No Response Filed – Appeals Dismissed**

The following cases had show cause orders entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless affidavits were filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There were no responses to the show cause orders submitted by the Appellants.

Q. Glenn Beamus v. Kentucky State Fair Board

R. Charles Perdue v. Environmental and Public Protection Cabinet

S. Isaac Yett v. Finance and Administration Cabinet

Ms. Gibson moved to find that the Appellants had not responded to the show cause orders and that the recommended orders be accepted dismissing the appeals for failure to timely prosecute the appeals. Ms. Hendricks seconded and the motion carried 6-0.

10. **WITHDRAWALS**

Ms. Hendricks moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Mr. Frazer seconded and the motion carried 6-0.

A. Valerie Curry v. Personnel Cabinet

B. Dale Martin v. Department of Corrections

- C. Simmy Middleton v. Personnel Cabinet
- D. Tiffany Mullis v. Personnel Cabinet
- E. Patricia Pyles v. Personnel Cabinet
- F. Jennifer Ellis-Ontiveros v. Personnel Cabinet (2 appeals)
- G. Pauletta Hatcher v. Personnel Cabinet
- H. Christina Jennings v. Personnel Cabinet
- I. Dale Rocker v. Department of Corrections and Personnel Cabinet
- J. William Scott Stanfill v. Department of Corrections

## 11. SETTLEMENTS

Mr. Frazer moved to consider the following settlements *en bloc* and to accept the settlements as submitted by the parties sustaining the appeals to the extent set forth in the settlements. Ms. Gibson seconded and the motion carried 6-0.

- A. Peggy Cook v. Personnel Cabinet
- B. Betsy Ross v. Department of Corrections
- C. Leigh Sullivan v. Cabinet for Health and Family Services
- D. Ervinia Hall v. Environmental and Public Protection Cabinet
- E. Steven Jackson v. Transportation Cabinet
- F. William Johnson v. Department of Corrections
- G. Ashley King v. Education Cabinet
- H. Brian Nunn v. Department of Juvenile Justice
- I. Lakeesha Tisdale v. Education Cabinet

## 12. REQUESTS FOR INVESTIGATION

- A. Office of Employment and Training in Murray – Irregular employment practices  
Request by Loretta Madden

Mr. Sipek stated that a letter from Loretta Madden was forwarded to the Board by the Attorney General's office for possible investigation. The Hon. Dan Egbers provided a written response to the Board in response to Ms. Madden's allegations of irregular employment practices in the Office of Employment and Training in Murray, Kentucky. Mr. Sipek felt that Mr. Egbers adequately responded to the allegations. Specifically, he pointed to page 3, last paragraph, where Mr. Egbers states that "we are delighted to hear that Ms. Madden's effort to use political influence to secure an advantage in the Merit System employment was unavailing . . ." Mr. Sipek further explained to the new Board members the procedure that is followed in whether to investigate an allegation or not.



Ms. Hendricks moved not to conduct an investigation; Ms. Gibson seconded and the motion carried 6-0.

B. Kentucky Board of Nursing – Request by Terri Barton (Deferred from December)

Mr. Sipek stated that this request is from a former employee of the Board of Nursing and raises serious issues as to time and attendance practices in the Credentials Branch. Representatives from the Board of Nursing Dr. Charlotte Beason, Hon. Nathan Goldman, and Ms. Joyce Bosnick were present to answer questions from the Board. Mr. Sipek informed the Board that Terri Barton was unable to appear, but that she had responded stating her letter would speak for itself.

Ms. Gibson moved not to conduct an investigation; Ms. Center seconded and the motion carried 6-0.

13. **OTHER BUSINESS**

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A. Sick Leave Sharing Policy

Mr. Sipek advised this policy is both a regulation and statute. He stated that it is a program that works well. The criteria for an employee receiving sick leave is that they be off work at least ten (10) days. The criteria for an employee donating sick leave is that they have to have a balance of 75 hours after donating. Both agencies have the discretion of approving such donations.

Mr. Crocker has heard that Representative Derrick Graham is proposing a Sick Leave Bank, which Mr. Crocker said would make it even easier for employees to participate.

Ms. Morris pointed out that a certain portion of sick leave goes toward retirement, so employees may be reluctant to let go of their sick leave. However, any excess sick leave could be captured for the Sick Leave Bank.

B. Legislative proposals

Mr. Crocker handed the Board Members a Summary of House Bill 62, which is being proposed by Representative Mike Cherry, for discussion.

Chairman Higgins moved to defer discussion of HB62 to the February Board meeting. Ms. Goodmann seconded and the motion carried 6-0.

C. Discussion of use of surplus money in budget

Chairman Higgins expressed to the Board that it is their responsibility pursuant to KRS Chapter 18A to make recommendations to the Governor on how the surplus money should be spent. The two recommendations were that consideration be given to increasing funds paid into the Kentucky Employees Retirement System and consideration be given to additional funds being used to increase the annual increment for state employees. Mr. Andrews felt there was a lack of information as to the cost of the annual increment proposal and it was premature to make a recommendation. Chairman Higgins moved to make a recommendation to the Governor and the Representatives. Ms. Goodman seconded and the motion carried 3-2, with Mr. Andrews and Mr. Frazer opposing and Ms. Hendricks abstaining.

D. Discussion regarding pending investigations

Mr. Sipek informed the Board that there are currently four investigations pending.

1. Returning Retirees – Mr. Sipek stated the Board is making progress and have received a number of responses. He anticipates having a report for the February or March Board meeting. So far the responses have been that no agency has a written policy or practice of preventing the hiring of returning retirees. The agency that did have that practice has discontinued that practice.

2. Ann Aukerman's request – Health and Family Services, Powell County. Mr. Sipek advised that the Board is waiting on additional information, which should be received soon. He anticipates having a report for the March Board meeting.

3. Patton Database – Mr. Sipek advised that the investigation is still in the early stages. It's moving slowly because some of the people involved no longer work in state government. However, one witness has been interviewed.

4. Doug Doerting Investigation – Mr. Sipek advised the Board that this office has received access to the Attorney General's database. This allows the ability to search for documents, without having to look through stacks of paper, which we have neither the time nor resources to do. One problem to granting us access is that it also requires this office to keep the documents confidential, i.e., we cannot contact Transportation to discuss them. However, staff may be able to present a request to Judge Rhorer in the future to share documents as it pertains to the investigation.

5. Special requests from former Board member Mr. Bruce Middleton at the December 2006 Board Meeting.

A. Employees virtually have no resources to prepare their complaint; however, the agencies have unlimited resources. He proposes a legal defense fund be set up.

B. Mr. Middleton did not think seniority was given enough consideration for candidates for job openings. He proposed that a change be proposed through the Legislature to give more weight to seniority.

Chairman Higgins recommended that Mr. Dan Egbers speak to the Board regarding these requests. Mr. Egbers saw no problem for a legal defense fund if it was funded by employees and not the taxpayers. However, he advised that employee's have access to KASE (Kentucky Association for State Employees). KASE charges the employee "dues," which in turn provides the employee insurance and legal representation. Mr. Egbers disagrees with giving more weight to seniority, that it should be the discretion of the agency. He also cited *Bowling v. Natural Resources* as a guideline.

There being no further business, Mr. Andrews moved to adjourn, Ms. Hendricks seconded, and the motion carried 6-0. (3:58 p.m.)

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Greg Higgins, Chairman

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Tina Goodmann, Vice-Chairman

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Betty Gibson, Member

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Lisa Hendricks, Member

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Rosemary Center, Member

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Jackson M. Andrews, Member

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Robert B. Frazer, Member

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This item has been placed on the agenda for discussion at the request of new Board members.